88-707

Supreme Court, U.S.
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NO_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

EILEEN CONWAY,

Petitioner,

vs.

FIRST TRUST COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE NORTH DAKOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Eileen Conway
Attorney pro se
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Germantown, Tennessee 38138
(901) 754-1057

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QUESTIONS PRESENTED FOR REVIEW

As a matter of law, did the North Dakota Supreme Court violate the substantive and procedural due process rights and equal protection rights of Conway, beneficiary of the Estate of Guy Kjorvestad, Sr. (who died on January 27, 1973) when it "repealed in the interest of justice" the Probate Code of the North Dakota Century Code and rejected the Transition Provision of the Uniform Probate Code but instead applied the Uniform Probate Code which was not adopted until July 1, 1975, almost two and a half years after the death of Guy Kjorvestad, Sr., a farmer?

As a matter of law, did the North Dakota Supreme Court violate the substantive and procedural due process rights of Conway when it imposed ten financial penalties against her for exercising her right of

due process of law and equal protection of the Probate Statutes of the North Dakota Century Code because she contested fraudulent accounts of the combined Estate of Guy Kjorvestad, Sr. and the Estate of Selma Kjorvestad?

As a matter of law, did the North Dakota Supreme Court violate her substantive and procedural due process rights afforded by the Fourteenth Amendment and violate her right of protection from "excessive fines imposed, nor cruel and unusual punishments inflicted" afforded by the Eighth Amendment, when it imposed ten financial penalties against Conway because her appeals of secret, counterfeit court orders approving fraudulent accounts of the combined estates and secret, underground hearings in the Nelson County Underground Probate Court, executed by a former North Dakota Supreme Court Justice were

"frivolous, flagrantly groundless and taken in bad faith?

As a matter of law, did the North Dakota Supreme Court err in denying Conway a fair trial, depriving Conway the right to inspect the Docket File of the Estate of Guy Kjorvestad, Sr. and refusing Conway the right to examine the former Probate Officer of First Trust on fees which consitute ten financial penalties against Conway because she exercised her right as a beneficiary to due process of law and equal protection of the Probate Statutes of the North Dakota Century Code and the North Dakota Constitution?

As a matter of law, did the North Dakota Supreme Court err in awarding, in violation of the Probate Statutes of the North Dakota Century Code, a total of $280,104.97 in attorney fees plus ten

financial penalties and double costs, a $2,500.00 Reserve Retainer from the debt-free, bankrupt Estate of Guy Kjorvestad, Sr. when there has never been a distribution to his beneficiary, there has never been a single accounting in 15½ years and there is no record of the disappearance of $665,000.00 in cash assets from the Nelson County Probate Court?

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OPINIONS BELOW

The Judgment with Amended Opinion of the North Dakota Supreme Court, whose judgment is sought to be reviewed, is reprinted in the Appendix. The Judgment evolved from Judgment of the North Dakota Supreme Court entered on October 1, 1985. It encompasses three amended orders in the Nelson County Probate Court of the Judgment entered October 1, 1985. The amended orders of the Nelson County Probate Court, opinions and judgments of the North Dakota Supreme Court are reprinted in the Appendix.

To The Honorables, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Eileen Conway, respectfully requests a Writ of Certiorari to review Judgment of the North Dakota Supreme Court entered May 16, 1988 with Amended Opinion entered June 28, 1988. The North Dakota Supreme Court entered Order Denying Petition for Rehearing on June 28, 1988.

JURISDICTION

The Eighth and Fourteenth Amendments of the Constitution of the United States confers jurisdiction on the United States Supreme Court to review the Judgment of the North Dakota Supreme Court.

The North Dakota Supreme Court violated the right of Conway for protection under the Eighth Amendment from "execessive fines imposed, nor cruel and unusual punishments inflicted" because she exercised her right of due process of law and equal protection of the Probate Statutes of the North Dakota Century Code and the North Dakota Constitution.

The due-process clause of the Fourteenth Amendment ensures impartial judges. The Constitution gives the United States Supreme Court the power and the duty to keep the North Dakota Supreme Court from undermining the rule of law. In an affront to constitutional law, the North

Dakota Supreme Court ignored the Eighth and Fourteenth Amendment of the Constitution; rejected the Constitution of North Dakota; repealed the Probate Statutes of the North Dakota Century Code; refused to acknowledge the Transition Provision of the Uniform Probate Code; threw out their own North Dakota Court Rules; and disregarded common law in order to cover-up probate fraud and felonies committed by a former North Dakota Supreme Court Justice, Johnson, attorney for First Trust.

The petitioner requests stay or proceedings in the North Dakota Supreme Court and the Nelson County Probate Court pending the decision of this Court.

STATEMENT OF THE CASE

A. Proceedings and Disposition Below.

This is a Petition for Writ of Certiorari arising out of petitioners's appeal of Findings of Fact, Conclusions of Law and Order entered October 2, 1984 in the Nelson County Probate Court in Lakota, North Dakota. During oral argument before the North Dakota Supreme Court, the attorney for First Trust, Johnson, demanded that his former associate justices on North Dakota's highest court impose penalties against the petitioner, the beneficiary of the Estate of Guy Kjorvestad, Sr., for exercising her right under NDCC 30-20-13 to contest Findings of Fact, Conclusions of Law and Order.

1. Findings of Fact, Conclusions of Law and Order entered October 2, 1984.

When First Trust petitioned for a hearing on the final account of the Estate of Guy Kjorvestad, Sr. it submitted

two fraudulent documents: (a) a secret counterfeit court order which approved an interim account of the Estate of Guy Kjorvestad, Sr. and the Estate of Selma Kjorvestad, combined; and (b) final account.

(a) The secret, counterfeit court order procured by fraud on December 8, 1982.

Three weeks before North Dakota law changed on January 1, 1983 to require judges to have a law degree, First Trust petitioned for a hearing on an interim account before Judge Arnold Johnson, a full-time farmer and part-time judge, with a high school education, in Steele County, Finely, North Dakota. (Judge Johnson was substituted after Nelson County Probate Judge, Clerk of Court and Register of Deeds, Audrey Swanke, officially acknowledged two incidents of assault and battery against Conway in the Nelson County courtroom during a hearing when Conway pleaded for an accounting of

$665,000.00 in cash assets in her father's estate. After her ten minute violent rampage the six foot Judge Swanke forced Conway to sign deeds to 3520 acres of farmland. Judge Swanke formally withdrew as Probate Judge for the Estate of Guy Kjorvestad, Sr. and the Estate of Selma Kjorvestad in letters in the probate files. However, Judge Swanke illegally continued to sign secret court orders allowing criminals to ziphon cash assets out of bank accounts belonging to the estates. (Brief of Appellant, #870110, p. 15; Petition for Rehearing, #870111, p. 1 to 8)

First Trust and Johnson did not appear for their own hearing scheduled for 10 A.M. and claimed they had forgotten that they petitioned for a hearing. When they appeared in dishevelment at 12:30 P.M., Conway cited errors, omissions, discrepancies, false statements and listed $882,740.53 in missing cash assets. Fir-

st Trust aborted the hearing, withdrew their accounting and left the courtroom after the thirty minute hearing. Twenty-two months later it was discovered that Johnson and Anderson returned to Finely the next day and procured the signature of Judge Johnson on a court order which approved the interim account they had withdrawn the day before. First Trust deprived Conway of Notice and kept the court order secret for 22 months. On December 8, 1983, Anderson, in sworn testimony, denied that First Trust had secured a court order approving the interim account. (App. #870110, p. 30)(Brief of Appellant, #870110, p.12)

At the onset of the hearing on the final account on September 21, 1984, the judge announced: (App, #870110, p. 53)

> "Should it become necessary for the Court to rule on objections, because you have exceeded the scope of the hearing that we have set up, I invite Mr. Johnson to make those objections timely and I will rule on them as we go ahead." (emphasis supplied)

The counterfeit court order foreclosed Conway from inheriting $882,740.53.

(b) Final account of the Estate of Guy Kjorvestad, Sr. and the Estate of Selma Kjorvestad, combined.

Prior to the hearing, Conway exercised her rights under NDCC 30-20-13, 30-20-15, 30-20-01, 30-20-02, 30-20-07, 30-20-14, 30-20-09, 30-20-05, 30-12-09 (1) to file petition for accounting of $665,000.00 in cash assets in the Estate of Guy Kjorvestad, Sr.; (2) to contest the counterfeit court order and file written objections to it; (3) to file a written protest formally contesting the final account; (4) to file a petition pleading to the court to reject the final account; and (5) to file Objections to Allowance of Account. Durthe hearing, Conway formally petitioned the Court for an accounting of the Estate of Guy Kjorvestad, Sr.

Probate Officer, Anderson, committed

perjury 7 times when examined on her own accounting and when examined on separate accounts and securities, practiced evasion 24 times, whispering, "I don't know" or "I don't remember". Anderson confessed in sworn testimony that neither First Trust nor Anderson had ever inspected the Probate File, never read the Will, never collected his property, never preserved his property, and never accounted for his property. (Brief of Appellant, #870110, p. 16 to 23) Johnson negotiated with the Judge to change the Will of Guy Kjorvestad, Sr., and alter the distribution in order to cover-up theft of the contents of 4 safe deposit boxes belonging to his estate. Johnson claimed that embezzlements from the estate had been paid to Conway as an "Executor's Commission" and compounded his fraud by deducting the embezzlements as an "Administratrative Expense" on fraudulent estate tax returns. (App. #870110, p. 126)

Conway appealed the Order to the North Dakota Supreme Court. In Opinion and Judgment entered October 1, 1985, the North Dakota Supreme Court ruled: (App. p. 42)

> "We find no procedure from the old Probate Code which should be applicable in this decade to First Trust 'in the interest of justice.'
> Nor, do we find any procedure in the new Probate Code which is infeasible of application to these estates."
>
> "Conway points out that Kjorvestad I, 250 N.W. 2d at 276, approved application of old Probate Code procedures to these dispute in 1977. In that decision, this court said: "Application of former law was in the discretion of the trial court and we do not find an abuse of that discretion..." This prior discretionary application of old procedures did not fix procedural rights for the eternity of these estates. It is axiomatic that procedural modes, as distinguished from substantive rights, are not vested and are subject to repeal, modification or change. (App. p. 41 to 43)
>
> "First Trust suggest that we consider assessing its costs and attorneys fees on this appeal against Conway's share of the estates as an appropriate method for dealing with her unrestrained and unsubstantiated accusations. We agree." (App. p. 48)

> "Accordingly, we exercise our powers under Rule 38, R.D.R.App.P., and direct an award accordingly. We order that First Trust be paid its reasonable compensation, attorney's fees and costs on this appeal out of Conway's share of the estate only, rather than from the total estate as has been done heretofore." (App. p. 49)

The North Dakota Supreme Court remanded the case back to the Nelson County Probate Court to levy financial penalties against Conway for exercising her right of due process of law and equal protection of the laws.

2. Amended Findings of Fact, Conclusions of Law and Order Upon Remand.

Again, Johnson, the former North Dakota Supreme Court Justice, used the Nelson County Underground Probate Court because (1) Anderson had been fired by First Trust for her condition in Nelson County Probate Court for the hearing on the final account on September 21, 1984 (Brief of Appellant, #870110, p. 9) and (2) to evade examination of their billings for the period beginning September 1, 1984 which included charges for preparing the fraudulent final account and counterfeit court order (App, #870110, p. 143 to 152) To avoid examination of probate fraud, perjury and felonies, Johnson and First Trust, in violation of NDCC 30-20-15, deprived Conway of Notice and the right to defend herself against financial penalties in a court of law.

Again, Johnson used his position as a former North Dakota Supreme Court Just-

ice to subvert Judge Dosch and convert the Nelson County Probate Court into a racketeering enterprise operated for the private profit of First Trust and Johnson. Johnson coerced Judge Dosch to amend the entire Opinion and Judgment of the North Dakota Supreme Court entered October 1, 1985, and levied two financial penalties, $2,306.53 and $4,433.36, a total of $6,739.88 against Conway for exercising her right of due process of law and equal protection of the North Dakota Century Code but denied Conway the right to defend herself in a court of law.

The former North Dakota Supeme Court Justice documented "findings of fact" during the underground hearing in the Nelson County Underground Probate Court, under Supervised Administration, based on the testimony of the ghost of Conway and other phantom witnesses, fictitious exhibits, imaginary affidavits, an apparitional

court reporter, specteral beneficiaries, in an unidentified city, at an undisclosed location, on an unrevealed date, at an unspecified time, in The Golden Age of Judicial Corruption. First Trust and Johnson postponed mailing the counterfeit court order to Conway until after the time had expired for her to file a Motion.

Conway appealed the counterfeit court order to the North Dakota Supreme Court. In brief and oral argument, Johnson contended that Guy Kjorvestad's beneficiary (1) had no right whatsoever to Notice to secret court orders; (App. #870110, p. 168) (2) no right whatsoever to Notice of secret hearings; (App. #870110, p. 138) and (3) no right whatsoever to an accounting of her father's estate. (App. #870110, p. 138) The former North Dakota Supreme Court Justice explained his rationale in depriving Conway of Notice; "My thought process was

that it was a practical matter!" (Tr. Oral Argument, September 24, 1986)

In order to cover-up probate fraud and grave judicial procedural errors, the North Dakota Supreme Court changed "Amended Findings of Fact, Conclusions of Law and Order Upon Remand" entered December 5, 1985 in the Nelson County Probate Court to "Amended Order Upon Remand" and ruled:

> "Because this Amended Order Upon Remand was entered without notice or hearing, it is not appealable and we dismiss the appeal."

In its Opinion and Judgment entered on May 16, 1988 and Amended Opinion of June 28, 1988, the North Dakota Supreme Court imposed penalty # 3, $2,751.86 and penalty #4,329.00, a total of $6,086.86 for exercising her right of due process of law because Conway appealed First Trust's counterfeit court order and denied Conway of the right to defend herself in a court or law. The North Dakota Supreme Court

exceeded its juridiction, violated the due process rights of Conway and her right of protection from "excessive fines imposed, nor cruel and unusual punishments inflicted" and encouraged the Nelson County Probate Court to exceed its jurisdiction and to violate Conway's rights under the Fourteenth and Eighth Amendment when it ruled:

> "To avoid perpetuation of this dilemma, we suggest that the county court make <u>any</u> award therefore at the hearing, when and if it is held." (emphasis supplied) (App. p. 71)

The North Dakota Supreme Court falsely stated: (App. p. 68)

> "Conway appealed on February 1, 1986, arguing that she was deprived of a hearing on the reasonableness of the amounts compensation and attorney's fees."

Conway appealed because her rights under the Fourteenth and Eighth Amendment were violated.

3. <u>Findings and Order Approving Fees</u>

Entered February 23, 1987 in the Nelson County Probate Court.

First Trust demanded that the Nelson County Probate Judge levy ten financial penalties, six of unlimited and undisclosed amounts for future fees to Anderson (who had been fired over 3 years ago) and Johnson without prior authorization from any North Dakota Court, against Conway because her appeals of fraudulent accounts and counterfeit court orders procured by fraud in the Nelson County Underground Probate Court were "frivolous, flagrantly groundless and taken in bad faith". During the hearing, the Nelson County Probate Judge denied Conway a fair trial and deprived Conway of the right to examine the former Probate Officer of First Trust on charges which constituted ten financial penalties against Conway:

Supreme Court Penalty #1 Against Conway. Penalty of $2,306.53 was levied for contesting final account and counterfeit

court order in which $665,000.00 disappeared without a single accounting in 15½ years from her father's estate. The penalty represents the amount of "featherbedding fees" of Anderson while she was employed as a Hostess of First Bank after she was fired from First Trust.

Supreme Court Penalty #2 Against Conway. The $4,433.36 penalty represents charges of Johnson for preparing fraudulent final account and counterfeit court orders.

Supreme Court Penalty #3 Against Conway. A double-penalty, $2,206.53 and $2,751.86 against the beneficiary for her appeal of "Amended Findings of Fact, Conclusions of Law and Order Upon Remand, procured by fraud in the Nelson County Underground Probate Court. The two penalties represent the featherbedding fees of Anderson while employed as Hostess of First Bank.

Supreme Court Penalty #4 Against Conway.

The double-penalty, $4,433.36 and $4,329.00 represents charges of Johnson for preparation of fraudulent final account and counterfeit court orders procured by fraud in the Nelson County Underground Court.

Supreme Court Penalty #5 Against Conway. Approval in advance without prior authorization of a North Dakota court, for a financial penalty of undisclosed and unlimited amounts against the beneficiary for the future fees of Johnson but deprived Conway of the right to defend herself in a court of law.

Supreme Court Penalty #6 Against Conway. The Court order in advance, without prior authorization of a State Court, a financial penalty of undisclosed and unlimited amounts for featherbedding fees of the Hostess of First Bank since her last bill but deprived the beneficiary

of the right to defend herself in a court of law.

Supreme Court Penalty #7 Against Conway. The Court ordered in advance, without prior authorization from any State Court, a financial penalty of unlimited and undisclosed amounts against the beneficiary for future fees of Johnson but deprived Conway of the right to defend herself in a court of law.

Supreme Court Penalty #8 Against Conway. The Court ordered in advance, without prior authorization from any State Court, a financial penalty of unlimited and undisclosed amounts against the beneficiary for future featherbedding fees of the Hostess of First Bank but deprived Conway of the right to defend herself in a court of law.

Supreme Court Penalty #9 Against Conway. In violation of their own North Dakota

Rules of Disciplinary Procedure, Rule 22, and ABA Standards for Lawyer Discipline and Disability Procedures, Section 8.3, the Court ordered an unlimited and undisclosed financial penalty against the beneficiary for filing a complaint against Johnson with the Disciplinary Board of the Supreme Court. (First Trust Petition for Rehearing)

Supreme Court Penalty #10 Against Conway. The Court ordered in advance, without prior authorization of a North Dakota court, a financial penalty of unlimited and undisclosed amounts against the beneficiary for any future complaint she may file against Johnson but deprived Conway of the right to defend herself in a court of law.

Petitioner appealed the order to the North Dakota Supreme Court. In Opinion and Judgment entered May 16, 1988, the North Dakota Supreme Court affirmed in

part and reversed in part the Order of the Nelson County Probate Court. The North Dakota Supreme Court reversed Penalty #9 and Penalty #10.

Petitioner filed Petition for Rehearing on May 23, 1988. First Trust filed Petition for Rehearing for additional billings and included copies of confidential complaints filed by Conway against Johnson.

The North Dakota Supreme Court entered Order Denying Petition for Rehearing to petitioner on June 28, 1988.

4. Amended Opinion of the North Dakota Supreme Court entered June 28, 1988.

The North Dakota Supreme Court reversed their Opinion and Judgment entered May 16, 1988. After reading the confidential complaints filed against Johnson by the beneficiary, the North Dakota Supreme Court reinstated Penalty #9 and added another Penalty #10 against the ben-

ificiary for double costs and additional fees for their former associate justice but deprived petitioner of the right to defend herself in a court of law.

B. Manner of Raising Federal Questions of Fourteenth Amendment in Nelson County Probate Court.

Petitioner pleaded for the right of due process of law and equal protection of the laws during the hearing in Nelson County Probate Court on February 1, 1987 (Case No. 3168, Tr. p. 17, line 11; p. 18, line 24; p. 34, line 9; p. 35, line 19. 21; p. 44, line 2; p. 51, line 1, 8, 16; p. 52, line 16; p. 53, line 4; p. 55, line 9; p. 57, line 1, 20; p. 58, line 7; p. 59, line 4)

C. Way in Which Federal Questions Were Passed Upon by Nelson County Probate Court.

1. The judge threatened to terminate the hearing 17 times if Conway attempted

to examine First Trust on charges for probate services rendered on Exhibits #1 to #4, the basis for the ten financial penalties against the petitioner: (Tr. p. 17, line 7, 21; p. 18, line 22; p. 19, line 6; p. 28, line 11; p. 29, line 7; p. 32, line 20; p. 33, line 13; p. 38, line 25; p. 39, line 22; p. 41, line 23; p. 42, line 12, 23; p. 43, line 15; p. 44, line 20; p. 51, line 23)

2. The judge forced petitioner to give up her examination after Anderson refused to answer 47 times, Johnson objected to the examination of charges 44 times, and the judge sustained Anderson's refusal to answer and Johnson's objections 42 times.:

1. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 12, line 4)

2. Anderson refused to answer.
(Tr. p. 13, line 10)

3. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 16, line 15)

4. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 17, line 18)

5. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 17, line 22)

6. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 17, line 25)

7. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 18, line 3)

8. Anderson refused to asnwer. Johnson objected. Judge sustained.(Tr. p. 18, line 7)

9. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 18, line 10)

10. Anderson refused to anwer. Johnson objected. Judge Sustained.(Tr. p. 18, line 14)

11. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 18, line 17)

12. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 18, line 20)

13. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 21, line 3)

14. Anderson refused to answer. Johnson objected. (Tr. p. 25, line 17)

15. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 25, line 23)

16. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 25, line 1)

17. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p 26, line 25)

18. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 27, line 4)

19. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 27, line 6)

20. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 27, line 15)

21. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 28, line 20)

22. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 28, line 23)

23. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 24, line 22)

24. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p.35, line 23)

25. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 36, line 6)

26. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 37, line 2)

27. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 37, line 10)

28. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 38, line 23)

29. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 39, line 25)

30. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 40, line 3)

31. Anderson refused to answer.
(Tr. p. 40, line 7)

32. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 40, line 18)

33. Anderson refused to answer. Johnson objected. Judge sustained.(Tr. p. 41, line 2)

34. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 41, line 24)

35. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 42, line 6)

36. Anderson refused to answer. Johns objected. Judge sustained.(Tr.p. 42, line 22)

37. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 43, line 1)

38. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 43, line 20)

39. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 46, line 13)

40. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 46, line 23)

41. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 47, line 10)

42. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 48, line 16)

43. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 50, line 6)

44. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 50, line 9)

45. Judge blocked answer.(Tr. p. 50, line 9)

46. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p.54, line 16)

47. Anderson refused to answer. Johnson objected. Judge sustained.(Tr.p. 54, line 16)

Johnson claimed that Anderson's refusal to answer 47 times, Johnson's objections 44 times and the judges sustainments 42 times was "direct personal testimoney as to services performed and the reasonableness of the fees for those services and I submit that is more than sufficent." (File No. 3168, Tr. p. 54, line 25; p. 72, line 20)

In Findings and Order Approving Fees, entered February 23, 1988, Judge Jonal Uglem ruled, "The testimony of Pamela Anderson as an employee of First Trust Company of North Dakota familiar with the instant estates as well as experiences in administration of other estates is accurate and trustworthy." (Case No. 3168, App. p. 77)

3. In violation of the North Dakota Constitution, Article XI, Section 5 and Section 6, and Rule 30 of the N. D. Rules of Appellate Procedure, Judge Jonal Uglem and Clerk of Court Audrey Swanke sealed the Docket File of the Estate of Guy Kjorvestad, Sr. to cover-up the disappearance of $665,000.00 in cash assets from the Nelson County Probate Court without a single accounting in 15½ years. (App. p. 99 to 127) The penalties for tampering with public records against Judge Jonal Uglem, Clerk of Court Audrey Swanke and Deputy Clerk of Court Susan Pederson are provided ed in NDCC 12.1-11-05 and 44-04-18.

4. Judge Jonal Uglem and Clerk of Court Audrey Swanke reject Conway's Petition to Inspect Probate File, Including Docket File of the Estate of Guy Kjorvestad, Sr.

D. Manner of Raising Federal Questions of Fourteenth Amendment in North Dakota Supreme Court.

Brief of Appellant, #870110

Issues: II, III, V.

Statement of the Case: p. 2, line 1, 29; p. 3, line 1, 28; p. 7, line 16; p. 11, line 33; p. 26, line 24, 35; p. 27, line 9, 21; p. 28, line 36; p. 29, line 23; p. 30, line 1, 7; p. 34. line 35; p. 35, line 36; p. 36, line 1, 10, 13; p. 37, line 6; p. 38, line 2, 16, 23; p. 39, line 17; p. 40, line 38; p. 42, line 19, 23; p. 43, line 3; p. 45, line 23; p. 47, line 33; p. 48, line 1, 25, 34; p. 50, line 20.

Reply Brief of Appellant #870110: p. 1, line 1; p. 2, line 7; p. 4, line 21; p. 5, line 16; p. 6, line 16; p. 7, line 11, 18; p. 8, line 34; p. 9, line 16; p. 10, line 9, 27, 36.

Petition for Rehearing, #870110: p. 1 to 8; App. p. 1 to 4.

E. Manner of Raising Federal Question of Eighth Amendment in the North Dakota Supreme Court:

Brief of Appellant, #870110:

Issues: II, III, IV, V, and VI.

Statement of the Case: p. 2, line 1, 24; p. 3, line 1, 18, 22, 25, 28; p. 4, line 32; p. 7, line 16, 32; p. 8, line 1; p. 26, line 1; p. 27, line 4, 9, 21; p. 28, line 33; p. 29, line 1, 23, 35; p. 30, line 1, 10; p. 36, line 1, 10, 13; p. 37, line 6, 18, 23, 30; p. 38, line 2, 16, 23, 28, 32; p. 40, line 38; p. 41, line 1; p.42 line 13; p. 43, line 3; p. 45, line 2; p. 47, line 36; p. 48, line 1, 25, 33; p. 49, line 1, 15; p. 50, line 12.

Reply Brief of Appellant, #870110:

p. 1, line 1; p. 2, line 7; p. 4, line 9; p. 5, line 16; p. 7, line 11, 18, 27, 36; p. 8, line 1, 8, 17, 22, 27,

33; p. 9, line 1 6; p. 10, line 9, 16, 271

F. Way in Which the North Dakota Supreme Court Passed on Federal Questions:

In Opinion entered on May 16, 1988, the North Dakota Supreme Court ruled:

> "An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which could be seen as evidence of bad faith." "We deem this appeal to be frivolous under Rule 38, R.D.R.App.P."

The Court affirmed eight financial penalties against Conway but reversed Penalty #9 and Penalty #10. However, the Court added another financial penalty at the request of their former associate justice, Johnson, but deprived petitioner of the right to defend herself in a court or law.

In Amended Opinion entered June 28, 1988, The Supreme Court reversed their Opinion and Judgment entered on May 16, 1988. In violation of its own North Dak-

ota Rules of Disciplinary Procedure, Rule 22 and ABA Standards of Lawyer Discipline and Disability proceedings, Section 8.3, the Court reinstated Penalty #9 against petitioner for filing a complaint against Johnson with the Disciplinary Board of the Supreme Court.

The North Dakota Supreme Court rejected Conway's petition to unseal and open the Docket File and public records in the Nelson County Probate Court.

ARGUMENT

Guy Kjorvestad, Sr., a farmer, died on January 27, 1973. The Will of Guy Kjorvestad, Sr. is probated under the Probate Statutes of the North Dakota Century Code. The North Dakota State Legislature extended the protection of the Probate Statutes of the North Dakota Century Code under NDCC Article VII, 30.1-35 of the Uniform Probate Code. (App. p. 130)

In a letter regarding the tax consequences of deaths prior to July 1, 1975, the Office of the North Dakota Tax Commission required that the estates of decedents who passed away prior to July 1, 1975 must be probated under the North Dakota Code that was in force on the date of death. (App. p. 97, 130)

1. The North Dakota Supreme Court exceeded its jurisdiction when it "repealed in the interest of justice" the Probate Statutes of the North Dakota Century

Code and Article VII, 30.1-35-01 (8-101) Subsection 1 and 2(a) passed by the North Dakota State Legislature to protect the estates of farmers.

2. The North Dakota Supreme Court violated Conway's right of due process of law and equal protection of the Probate Statutes of the North Dakota Century Code when it "repealed in the interest of justice" the Probate Statutes and instead applied the Uniform Probate Code which was not adopted until July 1, 1975, almost two and a half years after the date of death of Guy Kjorvestad, Sr., January 27, 1973.

> "We find no procedure from the old Probate Code which should be applicable in this decade to First Trust 'in the interest of justice'."

> "Conway points out that Kjorvestad I, 250 N.W. 2d at 276, approved application of the old Probate Code procedures to those disputes in 1977. In that decision this Court said:
> 'Application of former law was in the discretion of the trial court and we do not find an abuse of that discretion.'

> This prior discretionary application of old procedures did not fix procedural rights for the eternity of those estates. It is axiomatic that procedural rights, are not vestaed and are subject to repeal, modifiation or change." (App. p. 41 to 43) (emphasis supplied)

3. The rulings of the North Dakota Supreme Court are unjust, capricious, fraudulent, exceeds its jurisdiction and encourages the Nelson County Probate Court (1) to exceed its jurisdiction; and (2) to violate the constitutional rights of Conway under the Fourteenth and Eighth Amendment. In its decision on Amended Findings of Fact, Conclusions of Law and Order Upon Remand, procured by fraud in the Nelson County Underground Probate Court, under Supervised Administration, The North Dakota Supreme Court ruled in Opinion and Judgment entered October 28, 1986:

> "To avoid perpetuation of this dilemma, we suggest that the county court make any award therefor at the hearing when and if it is held. (App. p. 71)

4. In violation of the North Dakota Constitution, Article VI, Section 5 and Section 6, the North Dakota Supreme Court denied Conway access to the Docket File of the Estate of Guy Kjorvestad, Sr. (App. p. 99 to 127) The North Dakota constitutional provision was upheld in State v. First State Bank, 52 N.D. 231, 202 N.W. 391. The penalties against Judge Jonal Uglem, Clerk of Court Audrey Swanke and Deputy Clerk of Court Sustan Pederson are provided in NDCC 12.1-11-05 and 44-04-18.

5. The rulings of the North Dakota Supreme Court are in direct conflict with previous decisions in the North Dakota Supreme Court and even contradict previous decisions in these estates.

The rulings of the North Dakota Supreme Court violates the fundamental principle that one shall have notice of any judicial proceeding affecting one's rights. Deprivation of Notice affected the substantial rights of Conway and resulted in the forfeiture or divestiture of her right to inherit $882,740.53. Deprivation of notice foreclosed Conway from defending herself against financial penalties imposed by the North Dakota Supreme Court.

The North Dakota Supreme Court held in Crowl v. Wentz, 107 N.W. 2d 697, 700 (N.D. 1961):

> "Where giving of notice is relied on to sustain forfeiture or divestiture of one's rights, statutory direction as to how such notice shall be given must be strictly complied."

Quoting from an earlier decision in Nelson v. Ecklund, 68 N.D. 724, 288 N.W. 273, 277 (1938), the Court decided:

"No decree...so materially affecting the rights of property and person, can be valid, unless the party to be affected has had an opportunity to be heard in defense of his rights."

In Goetz v. Gunsch, 80 N.W. 2nd 548, (December 19, 1956), the North Dakota Supreme Court stated:

"Where judgment is procured by extrinsic fraud, upon discovery of fraud, or when such fraud is called to the attention of court, court has power and authority to vacate such judgment."

The North Dakota Supreme Court decided in Paul v. Paul et al, 170 N.W. 658, (February 11, 1919):

"Judgment or decree procured through extrinsic fraud practiced upon the court may thereafter at any time be vacated and set aside as wholly void."

The North Dakota Supreme Court ruled in Lewis v Poel, 136 N.W. 2 7, (July 13, 1965):

"If fiduciaries, their attorneys, and parties in interest, cooperated for personal profit in secret mismanagement of three estates at the expense of one or more of the estates and to the detriment of minor beneficiary of each estate, the beneficiary's assignee was entitled to account and other

relief for fraud."

The Court ruled in Hammond v. Weiss, 203 N.W. 2d 578:

> "Order of the probate court fraudulently obtained are not res judicate."

The North Dakota Supreme Court held in Danks v. Holland, 246 N.W. 2d 86 (September 26, 1976):

> "Where appeal was not flagrantly groundless, costs would not be assessed in favor of successful plaintiff on theory that the appeal was frivolous."

In Hoerr v. Northfield Foundry and Machine Company, 376 N.W. 2d 323 (N.D. 1985) the same Court decided:

> "An award of damages, costs, and attorney fees are not justified for an appeal which was neither frivolous or taken in bad faith."

6. The North Dakota Supreme Court abused its judicial power endowed by the State of North Dakota and breached the public trust when it made false statements in seven flawed decisions reported in the Northwestern Reporter to cover-up probate fraud.

hostage for 15½ years while they ziphoned out all the cash assets. In violation of law, Pearson for 15½ years claimed that the North Dakota Supreme Court ruled that there is no necessity to have a full accounting". (App. #870110, p. 3) (Reply Brief of Appellant, #870111, ps. 2 to 10) Conway v. Parker, 250 N.W. 2d 266 N.D. 1977; Conway v. Parker, 287 N.W. 2d 465 (N.D. 1980); Conway v. Parker, 304 N.W. 2d 83 (N.D. 1981; First Trust v. Conway, 375 N.W. 2d 160 (N.D. 1985); First Trust v. Conway, 395 N.W. 2d 162 (N.D. 1986)

In two wills written on July 8, 1969 and December 3, 1972, Guy Kjorvestad, Sr. designated his daughter, Eileen Conway, as his sole Executrix in the event that his wife predeceased him. An older daughter, Parker, who lived in his vicinity was not named in any capacity. Guy Kjorvestad's nephew and family lawyer, Idean Lockeen, was named Attorney for the Estate of

Guy Kjorvestad, Sr. Parker hired an attorney, Pearson, to push out Locken, the Attorney for the Estate of Guy Kjorvestad, Sr., remove Conway as Executrix and change the wills. Locken computed the estate tax to be $85,403.39. Pearson engaged in 3 criminal maneuvers to steal the Estate of Guy Kjorvestad, Sr.

1. Without the knowledge of Locken or Conway, Pearson illegally filed fraudulent federal and state estate tax returns in the name of Eileen Conway without her knowledge; Pearson illegaly filed fraudulent federal and state income tax returns in the name of Eileen Conway without her knowledge; and on February 3, 1978, Pearson illegally filed a lawsuit in the name of Eileen Conway against the United States of American without her knowledge in U. S. District Court based on a fraudulent estate tax return. After 15 years of litigation, all initiated by Pearson and First

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Trust, the estates were forced to pay $417,868.13 in additional taxes, additional interest, penalties and attorney fees for the fee-building adventures of Pearson and First Trust. The IRS established the correct estate tax for the Estate of Guy Kjorvestad, Sr. as $85,553.56--a difference of $150.17 from Locken's honest estate tax return--for 15 years of litigation and fraud by Pearson and First Trust. If the estates had been probated honestly by Locken, the estate would be worth $3, 253,992.40 on July 1, 1987. Instead, both estates are bankrupt.

2. Pearson destroyed all the estate records and defied two court orders to surrenders 10 large files of records.

3. Each time Conway, Executrix of her father's estate, attempted to get an accounting, Pearson countered with petitions to remove her in order to cover-up income and estate tax fraud.

Conway worked day and night for 15½ years and spent $250,000.00 of her own money trying to get an accounting of her father's estate that was required by North Dakota law. When Conway announced at a Pre-Trial Hearing that she was bringing in a Big Eight accounting firm to testify on income and estate tax fraud, a Document Examiner, formerly with the FBI, to testify on forgeries and witnesses to testify on theft, Pearson demanded that his former law partner, Judge Kirk Smith, remove Conway as Executrix on a Summary Judgment. Pearson appointed First Trust as his own Executor of the Estate of Guy Kjorvestad, Sr., First Trust. On December 8, 1982, First Trust and Johnson secured a counterfeit court order, procured by fraud, which covered eight years of probate fraud. Pearson spent 15 years trying to cover-up estate and income tax fraud and petitioned the North Dakota Supreme Court to force Conway "to give" her

Power of Attorney to a hard-core criminal, Youngern. The North Dakota Supreme Court is the only court that has taken a discretionary act, Power of Attorney, and used it as a weapon against a beneficiary to cover-up income and estate tax fraud by a renegade lawyer. 85 ALR 3rd 1108.

The United States District Court and the United States Tax Court both ruled again Pearson and First Trust. Estate of Guy Kjorvestad, Sr. v. United State of America, No. A78-2077, (March 10, 1981)

CONCLUSION

A member of the Joint Committee of Professional Discipline of the National Center of Professional Responsibility explained the futility of challenging judicial corruption in North Dakota:

> "North Dakota has been targeted as the prime problem state for judicial corruption. The North Dakota Judicial System is so corrupt that going into court there is like falling into the world of Charles Dickens. Judicial and lawyer discipline are simply non-existent! Ralph presides over a band of cut-throat thieves. When we have gone in there to clean up the corruption and raise standards we have met only hostility and resentment from the justices of the North Dakota Supreme Court."

A sub-culture of crime has grown up around the North Dakota Judicial System. The justices of North Dakota's highest court have made false statements to cover-up probate fraud and felonies of their former associate justice. Plato's dialogues in The Republic on the just and the unjust stripped of appearances are as appropriate in North Dakota in 1988

as they were in 410 B. C.

> "...for the highest reach of injustice is: to be deemed just when you are not."

Only when a major scandal loosens the grip of lawless judges and calls into question the legitimacy of the basic judicial system, as it surely does in "The-Probate-Crime-of-the-Century" in the Estate of Guy Kjorvestad, Sr., does real reform in the North Dakota Judicial System seem possible.

The petitioner prays that a Writ of Certiorari will be granted.